

Senate Bill No. 1289

CHAPTER 41

An act to repeal and add Section 5061 of the Business and Professions Code, relating to accountancy.

[Approved by Governor May 22, 1998. Filed with
Secretary of State May 22, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1289, Calderon. Public accountancy: commissions.

Existing law prohibits any person engaged in the practice of public accountancy from paying a commission to obtain a client, or from accepting a commission for a referral to a client of products or services of others. Existing law further provides that these provisions shall not prohibit payments for the purchase of an accounting practice or retirement payments to individuals presently or formerly engaged in the practice of public accounting or payments to their heirs or estates.

This bill would repeal the above provisions and instead would prohibit a person engaged in the practice of public accountancy from paying a fee or commission to obtain a client or from accepting a fee or commission for referring a client to the products or services of a 3rd party, subject to certain exceptions. This bill would also prohibit a person engaged in the practice of public accountancy from performing services for a client for a commission or from receiving a commission from a client when that person also performs specified services for that client.

The bill would also require a person engaged in the practice of public accountancy who is not prohibited from performing services for a commission, or from receiving a commission, and who is paid or expects to be paid a commission, to disclose that fact to any client or entity to whom that person recommends or refers a product or service to which the commission relates.

This bill would also provide that its provisions shall not prohibit payments for the purchase of any accounting practice or retirement payments to individuals presently or formerly engaged in the practice of public accountancy or payments to their heirs or estates. It would also provide for a definition of "fee" for purposes of these provisions and would require the State Board of Accountancy to adopt regulations to implement these provisions, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 5061 of the Business and Professions Code is repealed.

SEC. 2. Section 5061 is added to the Business and Professions Code, to read:

5061. (a) Except as expressly permitted by this section, a person engaged in the practice of public accountancy shall not: (1) pay a fee or commission to obtain a client or (2) accept a fee or commission for referring a client to the products or services of a third party.

(b) A person engaged in the practice of public accountancy who is not performing any of the services set forth in subdivision (c) and who complies with the disclosure requirements of subdivision (d) may accept a fee or commission for providing a client with the products or services of a third party where the products or services of a third party are provided in conjunction with professional services provided to the client by the person engaged in the practice of public accountancy. Nothing in this subdivision shall be construed to permit the solicitation or acceptance of any fee or commission solely for the referral of a client to a third party.

(c) A person engaged in the practice of public accountancy is prohibited from performing services for a client for a commission or from receiving a commission from a client during the period in which the person also performs for that client any of the services listed below and during the period covered by any historical financial statements involved in those listed services:

(1) An audit or review of a financial statement.

(2) A compilation of a financial statement when that person expects, or reasonably might expect, that a third party will use the financial statement and the compilation report does not disclose a lack of independence.

(3) An examination of prospective financial information.

(d) A person engaged in the practice of public accountancy who is not prohibited from performing services for a commission, or from receiving a commission, and who is paid or expects to be paid a commission, shall disclose that fact to any client or entity to whom the person engaged in the practice of public accountancy recommends or refers a product or service to which the commission relates.

(e) The board shall adopt regulations to implement, interpret, and make specific the provisions of this section including, but not limited to, regulations specifying the terms of any disclosure required by subdivision (d), the manner in which the disclosure shall be made, and other matters regarding the disclosure that the board deems appropriate. These regulations shall require, at a minimum, that a disclosure shall comply with all of the following:

(1) Be in writing and be clear and conspicuous.

(2) Be signed by the recipient of the product or service.

(3) State the amount of the commission or the basis on which it will be computed.

(4) Identify the source of the payment and the relationship between the source of the payment and the person receiving the payment.

(5) Be presented to the client at or prior to the time the recommendation of the product or service is made.

(f) For purposes of this section, “fee” includes, but is not limited to, a commission, rebate, preference, discount, or other consideration, whether in the form of money or otherwise.

(g) This section shall not prohibit payments for the purchase of any accounting practice or retirement payments to individuals presently or formerly engaged in the practice of public accountancy or payments to their heirs or estates.

SEC. 3. By modifying the regulation of commissions in Section 5061 of the Business and Professions Code, it is not the intent of the Legislature in enacting this act to diminish in any manner the duties of certified public accountants to clients, nor to abrogate regulations of the State Board of Accountancy relating to objectivity.

